IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10658 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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ABDUL SATTAR AKBARBHAI - Petitioner(s)

Versus

ADMINISTRATORS & 1 - Respondent(s)

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Appearance :

MRS SANGEETA N PAHWA for Petitioner(s) : 1,
MR DD VYAS for Respondent(s) : 1,
MR DA BAMBHANIA for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 19/01/2006

ORAL JUDGMENT

1. The petitioner has filed this petition under Article 226 of the Constitution of India, praying for direction to the respondents to

consider the case of the petitioner for promotion to the post of Clerk or Water Works Mistry as the petitioner is most eligible, qualified and senior most person for the said post. The petitioner has also prayed for the direction to consider the claim of the petitioner to the post of Clerk which was falling vacant on 30.9.1994, before giving appointment to any other person.

2. This petition was admitted and rule was issued on 2.9.1994. This Court has also granted interim relief restraining the respondents from promoting any person junior to the petitioner on the post of Clerk or on the post of Water Works Mistry. This interim relief was vacated by detailed order passed on 9.1.1996. The Court has observed that when promotion is not a right, the same cannot be insisted upon through the process of law,

interim injunction restraining the respondents from considering the case of promotion and even for administrative requirement, cannot be issued. The Court has further observed that in such case the petitioner, having no right with regard to his promotion, cannot be said to have a prima facie case. The Court has further observed that the respondent as and when considering the administrative requirement, prefers to promote the employees from lower cadre to the higher one, would consider the case of the petitioner subject to the rules governing the services and promotion.

3. It is the case of the petitioner that the petitioner was appointed as Valve-Man with the respondents on 1.1.1973. The petitioner was regularised on 1.4.1987. The petitioner made representation to the respondents whereby the petitioner claimed that he was entitled to get

promotion on the post of Clerk or Water Works Mistry. The petitioner has also made various representations on 6.8.1993 and 10.12.1993. However, it is the case of the petitioner that the petitioner was not given any reply and on 30.9.1994 one Shri Prakashchandra N. Sheth retired and the respondents had promoted other junior on this post in disregard of claim of petitioner and hence present petition is filed.

4. Mrs.Sangeeta N. Pahwa, learned advocate appearing for the petitioner has submitted that the petitioner was senior most person in the seniority list. The petitioner was at Serial No.12 in the seniority list produced by the respondents in Reference IT No.285 of 1978 and in the said seniority list persons mentioned at Sr.Nos.1, 5, 6, 7 and 10 have expired. It is further stated that the candidates mentioned at Sr.Nos.3, 4, 9 and 11 were not qualified. She

has submitted that the candidate mentioned at Sr.Nos.3, 9 and 11 were rojamdars and not qualified. She has further submitted that the candidate mentioned at Sr.No.8 is already retired. In this view of the matter, she has submitted that the candidate Nos.1 to 11 were not either qualified or eligible or existing as far as promotion is concerned. In this view of the matter, she has submitted that the petitioner is the senior most qualified eligible candidate for the post of Water Works Mistry and, therefore, the petitioner should be given promotion for the post of Water Works Mistry.

5. She has further submitted that Shri Mangabhai Tejabhai, who was appointed on the post of Water Works Mistry in the year 1985-86 was not S.S.C and to the best of the information of petitioner he was not at all

educated. She has further submitted that though the petitioner was available at the relevant time, the petitioner was not promoted to the post of Water Works Mistry and Shri Mangabhai Tejabhai, who was not qualified was given ad hoc charge by the respondent No.4, for the reasons best known to the respondents. She has, therefore, submitted that the respondents are deliberately not promoting the petitioner with a view to harass the petitioner and, therefore, the impugned actions of the respondents are illegal, arbitrary, in colourable exercise of powers and also violative of Articles 14 and 16 of the Constitution of India.

6. Mr.Vyas, learned advocate appearing for the respondent No.1 has submitted that there is no question of considering the petitioner's case for promotion to the post of Clerk, as the

petitioner is not qualified for the said post. Even with regard to the post of Water Works Mistry, the petitioner has not made any representation and vide letters dated 6.8.1993 and 10.12.1993 the petitioner has only requested to promote him to the post of Clerk. There was no reference with regard to the promotion to the post of Water Works Mistry. Even otherwise, Shri Mangabhai Tejabhai whose reference is given in the petition is senior to the petitioner, as his name is appearing at Sr.No.2, whereas the petitioner is at Sr.No.12. He has further submitted that the averments made by the petitioner in the petition that the said Shri Mangabhai Tejabhai is not S.S.C. Whereas for the purpose of promotion to the post of Water Works Mistry S.S.C is not required. In absence of any details, it can not be believed that he is an uneducated person. Even otherwise, said Mangabhai

Tejabhai was promoted on ad hoc basis and that was also made in the year 1985-86. The petitioner has not challenged the said appointment in the year 1985-86 and the petition is filed in year 1994 i.e after 8 years. He has, therefore, submitted that no relief can be granted to the petitioner.

7. After having heard learned advocates for the respective parties and after having gone through the averments made in petition, affidavit-in-reply, rejoinder and Sur-rejoinder as well as documents attached thereto, the Court is of the view that there is no question of promoting the petitioner to the post of Clerk, as the petitioner was not qualified for the said post. With regard to the post of Water Works Mistry, from the seniority list it becomes clear that Shri Mangabhai Tejabhai was promoted to the said post in the year 1985-96

and he is senior to the petitioner and, even otherwise, said Shri Mangabhai Tejabhai was given an ad hoc charge in the year 1985-86 and that has not been challenged by the petitioner in the year 1985-86. Before filing the petition, the petitioner has not made representation to the effect that he should be given promotion to the post of Water Works Mistry. No writ of mandamus can be issued without making demand or representation to the authorities, as the authorities had no occasion to consider the petitioner's case. The position is well settled in law that there is no inherent right of promotion. It is true that while giving promotion the authority should consider rules and regulation governed. It appears to the Court that Shri Mangabhai Tejabhai was granted ad hoc promotion in the year 1985-86 as he was senior person and petitioner did not challenge the said decision

in 1985-86 and now the petitioner cannot raise such grievance after 8 years.

8. In the above view of the matter, the Court does not see any merit or substance in the petition. However, if the post is vacant and petitioner is qualified, the respondent authority may consider the request of the petitioner to the post of Water Works Mistry.

9. With the above directions and observations, this petition is disposed off without any order as to costs.

(K. A. PUJ, J.)

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